



## Emergency Regulation and Notice of Intended Regulatory Action (NOIRA) Agency Background Document

<b>Agency name</b>	Board of Accountancy
<b>Virginia Administrative Code (VAC) citation</b>	18 VAC 5 -21
<b>Regulation title</b>	Board of Accountancy Regulations
<b>Action title</b>	Changes incorporating amendments about (i) the qualifications for, and implementation of, the new computerized CPA exam, and (ii) the requirements for Ethics CPE.
<b>Document preparation date</b>	November 17, 2003

This form is used when an agency wishes to promulgate an emergency regulation (to be effective for up to one year), as well as publish a Notice of Intended Regulatory Action (NOIRA) to begin the process of promulgating a permanent replacement regulation.

This information is required for executive review ([www.townhall.state.va.us/dpbpages/apaintro.htm#execreview](http://www.townhall.state.va.us/dpbpages/apaintro.htm#execreview)) and the Virginia Registrar of Regulations ([legis.state.va.us/codecomm/register/regindex.htm](http://legis.state.va.us/codecomm/register/regindex.htm)), pursuant to the Virginia Administrative Process Act ([www.townhall.state.va.us/dpbpages/dpb\\_apa.htm](http://www.townhall.state.va.us/dpbpages/dpb_apa.htm)), Executive Orders 21 (2002) and 58 (1999) ([www.governor.state.va.us/Press\\_Policy/Executive\\_Orders/EOHome.html](http://www.governor.state.va.us/Press_Policy/Executive_Orders/EOHome.html)), and the *Virginia Register Form, Style, and Procedure Manual* ([http://legis.state.va.us/codecomm/register/download/styl8\\_95.rtf](http://legis.state.va.us/codecomm/register/download/styl8_95.rtf)).

### Preamble

*The APA (Section 2.2-4011) states that an "emergency situation" is: (i) a situation involving an imminent threat to public health or safety; or (ii) a situation in which Virginia statutory law, the Virginia appropriation act, or federal law requires that a regulation shall be effective in 280 days or less from its enactment, or in which federal regulation requires a regulation to take effect no later than 280 days from its effective date.*

- 1) Please explain why this is an "emergency situation" as described above.*
- 2) Summarize the key provisions of the new regulation or substantive changes to an existing regulation.*

In accordance with Section 2.2-4011 (A) of the Administrative Process Act (APA) and Executive Order 21 (2002), the Board of Accountancy is desiring to propose emergency regulations entitled, 18 VAC 5-21-10 et seq., Board of Accountancy Regulations. These proposed emergency regulations include two changes: (1) the qualifications for, and implementation of, the new computerized CPA exam, and (2) the requirements for Ethics CPE.

(1) The new computerized CPA exam.

The Board finds that new regulations regarding the Uniform CPA exam are required by an emergency situation, which is defined according to Section 2.2-4011 (A) as a situation involving an imminent threat to public health or safety. This threat appears in the negative impact on both the "Big Four" CPA firms and the small- and medium-sized CPA firms in Virginia that will result from approximately 1,200 new CPAs being prevented from entering the labor market beginning in 2004. Each year, this many potential employees enter the labor market in Virginia as a result of passing the Uniform CPA exam. This in turn will affect the competent practice of public accounting in Virginia that directly impacts the public—both businesses and individuals.

This situation will occur because beginning in 2004 the American Institute of Certified Public Accountants (AICPA) will no longer have a paper-and-pencil CPA exam available for candidates. It will be replaced nationwide by the AICPA's new computerized CPA exam. This means that the Board's current provisions for exam requirements that are specifically meant for the paper-and-pencil CPA exam will not be applicable to the new computerized CPA exam.

In 2002, Virginia had a total of 4,470 candidates take the CPA exam; in 2003, well over 5,000 took the CPA exam in the Commonwealth. Should the Board's proposed changes about the conduct of the CPA exam fail to be promulgated by emergency regulations, approximately 5,000 candidates will not be allowed to take the exam in Virginia in 2004. Further, Virginia is one of the last states to implement the 150-year education requirement. Therefore, the majority of these exam candidates in Virginia will not qualify to take the CPA exam in most other states.

The only provisions of the current regulations that will be changed are: (1) 18 VAC 5-21-10, add new definitions about the new computerized CPA exam for clarity; (2) 18 VAC 5-21-20, revise name of "Initial examination application fee" to "Initial CPA exam application fee," and clarify that this fee shall not exceed \$1,000; and (3) 18 VAC 5-21-30, add new language about the computerized CPA exam. In addition, "CPA exam" was substituted for "examination," only where necessary in the text for clarification.

The failure thus to promulgate these changes by emergency regulations meets the definition of an emergency situation that is an imminent threat to the public as defined in Section 2.2-4011 (A) of the APA.

(2) The new requirement for Ethics CPE.

In the fall of 2002, the Board entered into an Executive Agreement with the Governor to implement regulations about continuing professional education (CPE) in ethics. The Board will meet the Governor's priority by requiring initial applicants and regulants to obtain two CPE credits in ethics each year. The regulations are required to become effective in 2004. The implementation of this requirement will fulfill the enabling section of Chapter 291 of the 2003 Acts of the General Assembly, which provides that "the Board of Accountancy shall promulgate regulations to implement the provisions of this act to be effective within 280 days of its enactment."

The only provisions of the current regulations that will be changed are: (1) 18 VAC 5-21-10, add new definitions about CPE for clarity; (2) 18 VAC 5-21-40, revise current licensing requirements to call for the applicant who applies for licensure three or more years after successfully completing the CPA exam to complete the most recent Ethics CPE course; and (3) 18 VAC 5-21-170, add new language about the constitution of the new Ethics CPE course, and insert the revised dates for the beginning of the CPE reporting cycles for CPAs who practice public accountancy for an employer and not for the public, or who serve as an educator in the field of accounting.

These proposed emergency regulations are not otherwise exempt under the provisions of Section 2.2-4006 (A) (4).

## Purpose

*Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.*

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To fulfill its statutory mandate, the Board seeks to propose amendments to its existing regulations to revise and clarify the following sections: (i) qualifications for licensure including new language about the forthcoming computer-based CPA exam; and (ii) continuing professional education (CPE) requirements for initial applicants and regulants in ethics.

The proposed emergency regulations are essential to protect the health, safety and welfare of the citizens of the Commonwealth because the Board is mandated by statute to certify and issue CPA certificates to persons to practice public accountancy, and restrict the practice of public accountancy to only those persons who are so certified and may call themselves CPAs. Further, the Board can take such actions as may be authorized to ensure the continued competence of such licensed CPAs and to aid the public in determining the qualifications of such persons who give assurances on financial statements. The Board has the responsibility to enforce and implement such actions through the promulgation of regulations.

Finally, this action should not be construed as preventing any person from stating that he has prepared, compiled, assembled or drafted a financial statement, provided he does not use any additional language that comprises an assurance, make any claims or representations, or use any of the language prohibited by this statute.

## Legal Basis

- 1) Please confirm that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the emergency regulation and that it comports with applicable state and/or federal law.*
  - 2) Please indicate that the regulation is not otherwise exempt under the provisions of subdivision A.4 of Section 2.2-4006 of the APA.*
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As required by Executive Order 21 (2002), the Board has been given the legal authority to promulgate the contemplated amendments to its regulations through Chapter 44 of Title 54.1 of the Code of Virginia, 1950, as amended. The Board received a memorandum dated September 23, 2003 from the Office of the Attorney General stating that the Board has the authority to promulgate these emergency regulations.

These proposed emergency regulations are not otherwise exempt under the provisions of Section 2.2-4006 (A) (4).

**Substance**

*Please detail any changes that are proposed. Please outline new substantive provisions, all substantive changes to existing sections, or both where appropriate. Set forth the specific reasons why the regulation is essential to protect the health, safety, or welfare of Virginians. Delineate any potential issues that may need to be addressed as a permanent final regulation is developed.*

For changes to existing regulations, use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
18 VAC 5-21-10		The current section lists the definitions of the terms used in this chapter.	<p><b>Amendment:</b> New definitions have been added, while other definitions have been either rewritten for clarity or deleted, that directly relate to the implementation of the new computerized CPA exam and the CPE in ethics.</p> <p><b>Consequences:</b> The reader of the regulations will have a better understanding and require less clarification about the CPA exam and CPE.</p> <p><b>Essential Nature:</b> Clarified definitions are required for an accurate understanding of the words relating to the CPA exam and Ethics CPE that are used in the regulatory text.</p> <p><b>Issues:</b> None</p>
18 VAC 5-21-20		The current section lists all fees for the Board.	<p><b>Amendment:</b> In this section, the first change is from “Initial examination application fee” to “Initial CPA exam application fee.” The second change is to clarify that this CPA exam fee is assessed at the time of the initial examination, not for reexamination, and that it “shall not exceed \$1,000.”</p> <p><b>Consequences:</b> Unless enacted, the fee established for the initial application for the CPA exam will not be clarified for candidates preparing to take the exam, which will create unnecessary confusion about the process.</p> <p><b>Essential Nature:</b> Current regulations provide for a \$25 initial CPA exam fee to cover the costs of work performed by the Board members and staff. It is important that exam candidates understand that the total exam fee, which is assessed by the exam vendor, shall not exceed \$1000, and that this fee contains an initial exam fee of \$25 to pay for the work performed by the</p>

			<p>Board. <b>Issues:</b> None.</p>
<p>18 VAC 5-21-30</p>		<p>The current section lists the entry requirements for the CPA certificate and firm permit and for CPA supervising services involving the practice of public accounting.</p>	<p><b>Amendments:</b> Subsection C contains new language clarifying the requirements of a candidate to sit for the exam, and the granting of conditional credit for the current “non-computer-based CPA exam,” and the new “computer-based CPA exam.” <b>Consequences:</b> The current “non-computer-based CPA exam” is being replaced by a “computer-based CPA exam” in April 2004. By not providing language to clarify the requirements to sit for the CPA exam and the granting of conditional credit, impediments would be created for candidates seeking to sit for the exam during and after the transition period. <b>Essential Nature:</b> The new language about the “computer-based CPA exam,” including the transition to this exam, is essential since the new exam will be available in April 2004. This is also essential to ensure that CPA exam candidates will meet the appropriate requirements prior to taking the CPA exam and being certified by the Board in Virginia. <b>Issues:</b> None.</p>
<p>18 VAC 5-21-40</p>		<p>The current section lists the requirements for issuing an original CPA certificate, and a CPA certificate by endorsement and by substantial equivalency.</p>	<p><b>Amendments:</b> Subsection B contains new language requiring an original applicant who successfully completed the CPA exam three or more years before he applies for licensure to complete the “most recent Ethics CPE course.” According to statutory mandate, the only other alteration is changing “examination” to “CPA exam.” <b>Consequences:</b> The new requirements for an original applicant for licensure to provide evidence of having obtained Ethics CPE credits, if three or more years have passed beyond the year of successfully completing the CPA exam, ensures that the applicant meets the Board’s competency requirements to be issued a CPA certificate, and meets the Board’s statutory mandate to ensure the integrity of the profession. <b>Essential Nature:</b> Clarification of the Board’s requirements to issue an original CPA certificate is essential because it enables the applicants and the public to know the Board’s specific requirements. The new CPE requirements for an applicant who postpones his application for a CPA certificate after passing the CPA exam also ensures that the applicant is competent before he practices public accounting for the public. These changes are essential since</p>

			<p>they meet statutory changes, and comply with the Governor’s priority in the Executive Agreement signed with the Board.  <b>Issues:</b> None.</p>
<p>18 VAC 5-21-170</p>		<p>The current section identifies the CPE requirements for CPA certificate applicants and for CPA certificate holders.</p>	<p><b>Amendments:</b> This section on CPE requirements was revised so that CPA certificate applicants and certificate holders must complete the new Ethics CPE course. Such revisions also include language changes from “hours” to “CPE credits” for clarity. In subdivision B 1 the commencement date of each three-year CPE reporting period was changed due to statutory mandate to reflect that each period began on January 1<sup>st</sup>, not July 1<sup>st</sup>. New subsection D specifies the Ethics CPE course that will consist of one “self-contained course” about the standards of conduct, Code of Virginia statutes relating to public accountancy, and Board’s regulations that must be obtained each year. Each CPA to which the CPE requirements apply, who practice public accountancy either for the public, or for an employer and not for the public, or who serve as an educator in the field of accounting, must meet this requirement.</p> <p><b>Consequences:</b> These modifications are essential to clarify the Ethics CPE requirements for CPA certificate applicants to be able to meet the Board’s requirements before offering public accounting services, and for CPA certificate holders to continue maintaining and increasing their professional competence. The clarifications made to the Board’s commencement date for the three-year reporting cycles identified are mandatory due to statute. Regulators are now required by statute to earn Ethics CPE, which is identified as one “self-contained course” about the standards of conduct, Code of Virginia statutes relating to public accountancy, and Board’s regulations that must be obtained each year “immediately subsequent to the year in which these regulations become effective.”</p> <p><b>Essential Nature:</b> With recent instances of alleged fraudulent accounting and financial reporting by certain large companies and the apparent failure of the audit firm to prevent such occurrences, the Board entered into an Executive Agreement with the Governor to modify the CPE requirements for CPA certificate applicants and certificate holders. These Ethics CPE requirements are being added to the</p>

			<p>Board's regulations due to statutory mandate. By making these modifications, the Board will help ensure that a regulant who provides public accounting services for the public, or for an employer or other organization, and not for the public, or as an educator in the field of accounting will meet the Board's requirements for continuing professional education and will maintain and increase his professional competence. . The other change regarding the beginning dates of the three-year CPE reporting cycles represent statutory mandates, so there is no discretion.</p> <p><b>Issues:</b> None.</p>
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**Alternatives**

*Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action.*

Regulations governing the practice of CPAs in the Commonwealth are intended to qualify persons to work in a profession that requires specific knowledge and skills as well as experience in a number of very complex areas. These emergency regulations have been developed to implement those changes necessary to put in place regulations about the new computerized CPA exam and the Ethics CPE requirement. The only other changes made are those that are necessary to clarify the examination requirements and licensing requirements related to these two changes. Every effort has been made to implement only those changes deemed necessary and every effort has been made to minimize its impact on the public.

In every case, the Board of Accountancy considered whether there was a less burdensome alternative. Alternatives that failed to meet this consideration were rejected. Throughout the process of preparing these emergency regulations, the Board considered the costs of each provision in achieving its essential purpose and statutory mandate, as well as input from the public.

**Family impact**

*Please assess the impact of the emergency regulatory action on the institution of the family and family stability.*

The amendments proposed by the Board of Accountancy will not have an impact on the institution of the family and family stability. The proposed amendments will not strengthen nor erode the authority and rights of parents in the education, nurturing, and supervision of their children. They will not encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse and one's children and/or elderly parents. These amendments will not strengthen or erode the marital commitment. The effect of amendments on disposable family income will be minimal.